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The Public Interest: Overview

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Introduction

I should like, first of all, to commend both EPA and NIEHS for having organized this conference which I regard as being truly in the public interest. This occasion has afforded many of us an unusual opportunity to exchange information and to interact on scientific and technological issues critical to the formulation of rational policies prior to the decision-making process, rather than following it as is customarily the case.

I do, however, regret that a conflict between this conference and the rescheduled meeting of the President's Air Quality Advisory Board, prevented some key EPA decision-makers from being in attendance. I also regret that the EPA Office of Public Affairs decided not to issue a press release for this meeting. I suspect that the Office of Public Affairs considers that an open expression of differences in viewpoints and attitudes within the agency, such as those which perhaps it anticipated would emerge at this meeting, is a sign of weakness. I feel, on the contrary, that such differences, which fortunately exist within the various echelons of EPA, are an expression of strength and are clearly preferable to the more traditional monolithic image projected by most federal agencies.

Further, I particularly regret the refusal of GM and Ford to make presentations or even participate in discussions at this meeting. I would like to offer my sympathy to GM and Ford representatives for the embarassment they appear to have been subjected to by their management, in that they have been sent here under conditions of considerable personal constraint. Clearly, this "short-leash" treatment makes it difficult for such indentured professionals to discharge societal obligations broader than narrowly circumscribed corporate interests.

One problem in my giving this overview of the "public interest" position is that perhaps I am not formally qualified to do so, as I am not a "professional" public interest representative. However, in view of the fact that, as well known, I have close working relationships with a wide range of public interest groups, it was considered appropriate for me to attempt to capsulate my understanding of their viewpoints. These viewpoints are not easy to define, although common parlance tends to equate them with the philosophies and practices of professional public interest groups in Washington and elsewhere. These groups are loose *ad hoc* organizations which have, in part, generally arisen as an expression of citizen and consumer concerns and, in part, from the initiatives of a small number of young activist lawyers and other professionals. The professional and other staff in these organizations generally work with remarkable energy and dedication and with considerable financial and personal sacrifice for their concept of the public good and interest. However, these concepts are clearly not exclusive to

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public interest groups, and are shared by a growing but still small, number of professionals and citizens not formally associated with public interest activities.

Restrictions on Access to Data

The restricted availability of information necessary to the decision-making process is obviously a critical issue in which the public interest movement takes a properly uncompromising approach. There is a growing consensus that the data currently submitted by the automobile and related industries to EPA are highly selected and geared to narrowly defined short-term corporate interests. The flow of much critical information operates on a closed-loop basis within any industry and between closely interrelated industries. The relationship between the catalyst manufacturers and the automobile industry, particularly as exemplified at this conference, is illustrative. The catalyst manufacturers have stated that they have provided the automobile industry and the NAS-NRC with all the critical information on catalyst performance and on non-regulated emissions. The automobile industries refer questions on such topics back to the catalyst manufacturer. The NAS-NRC refuses to divulge such data as they are confidential. The NAS-NRC continues to claim exemption from the requirements of the Freedom of Information Act, although this is now being challenged in the courts.

The current role of the NAC-NRC in imposing restrictions on access to allegedly confidential data, and the implication of such practices on the regulatory process, invites critical consideration. The public interest sector tends to view this as an eggregious example of suppression of information and of the subversion of democratic norms. The NAC-NRC excludes public or agency access to working documents and reports of its panels on the basis of blanket claims of confidentiality. Illustratively, in the recent request for information of the NAC-NRC Committee on Motor Vehicle Emissions, three of the five pages of the request detailed how such information would be handled in confidence. Claims by the NAS-NRC that they would not otherwise obtain such data from industry appear unsupportable. Claims for confidentiality of data should be validated by the EPA Office of General Counsel to determine that the data are in fact secret within terms of the Freedom of Information Act.

Questions have been raised as to whether further legislation is needed to enable EPA to obtain all-the information it requires from industry. I believe that this is not the case. Perhaps more relevant questions are whether EPA has demanded the necessary data sufficiently vigorously; whether EPA has initiated active dockets on nonregulated emissions; whether EPA has asked for ongoing submissions of data on regulated emissions; whether EPA routinely validates all industrial claims for confidentiality of information by the Office of General Counsel; and finally, why EPA does not prepare periodic summaries of such data and make them available to agency officials, Congress and the public sector.

A particular concern of public interest groups and technological echelons in EPA has been the repeated refusal of industry over the past two years to supply emissions data and data on emission control systems on certification fleets for 1975 cars. The industry position, which has been reiterated at congressional hearings, is that they are unwilling to divulge such information until the 1975 cars are placed on sale!

When public representatives cannot obtain access to basic data relevant to the decision making process, the result is a covert form of authoritarian rule. Superficially the appearance of democratic process is preserved, but in reality major policy choices are partially or completely dictated by the major vested interests which control the data.

The Public Image of the Automobile Industry

The original and once widely admired qualities of the automobile industry typified

innovation and capitalistic entrepreneurialism at its best. These qualities have long since degenerated and have been replaced by the stance of a narrowly self-serving oligopolistic industry, whose practices are often characterized by conspiracy, violation of antitrust law, manipulation and suppression of data and a "public be damned" attitude. The basis for such contentions appears well supported by the following recent episodes, which collectively hardly inspire public confidence in the good faith and corporate mores of the automobile industry.

Illustrative Examples of Conspiracy and Illegal Acts

In 1969, an antitrust suit was filed by the Justice Department against domestic automobile manufacturers and their trade association, the Automobile Manufacturers Association, for conspiring to restrain the development and marketing of auto exhaust control systems since 1953. Evidence was obtained that the "auto competitors" had formed an illegal cross-licensing agreement. The grand jury attempted to criminally indict the industry, but they were overruled by top antitrust officials of the Nixon Administration who instead entered a civil suit. In September 1969, the companies concerned entered into a consent agreement with the government stipulating that they would not enter into such a conspiracy again. EPA estimates that the automotive air pollution resulting from this conspiracy has cost the nation $2.7 billion minimally.

In 1971, Ford illegally shipped 200,000 1972 model cars to dealers prior to obtaining EPA approval of their emission control devices, in clear violation of the Clean Air Act. The government imposed a $10,000 fine on Ford, less than $0.25 per car.

In 1972, Ford massively cheated on emission control certification tests. With Justice approval, they managed to ward off a subsequent criminal prosecution and jail sentence by paying a $7 million fine.

In 1973, illegal control "defeat devices" were installed on 1973 vehicles by the major domestic manufacturers. EPA had to order removal of these devices from about 2 million cars manufactured by GM, Ford, Chrysler, and American Motors.

Illustrative Examples of Distortion and Manipulation

It is well recognized that the domestic automobile companies have long and strenuously campaigned against the basis for air pollution standards which are widely accepted by the scientific and public health communities. They have minimized the documented relationships between air pollution and adverse health effects. They have suggested that air pollution is harmful at only very high levels, and in only certain areas. They have additionally contended that automobiles are less important contributors to air pollution than are stationary sources.

Former GM President, Mr. James Roche, has claimed that federal antipollution regulations have resulted from consumer "harassment". The same theme has been reiterated by Ford's President, Mr. Lee M. Iacocca, who has warned that the industry "has been backed to the cliff edge of desperation" by these regulations. The industry frequently bemoans the "rising tide of consumerism" and its "excessive preoccupation with auto safety."

The domestic auto manufacturers have claimed an inability to develop low-polluting alternatives to the obsolete internal combustion engine (ICE). The success of foreign competition however, seems to challenge the motivation of such an inability. An alternative hypothesis for this motivation is the large standing investment of the major auto companies in capital equipment for manufacturing the ICE, which would be rendered largely obsolete by a major change in automotive engine technology.

The major domestic manufacturers were able to persuade Mr. W. Ruckelshaus, previous Administrator of EPA, of their inability to meet the statutory '75/76 standards,

for which purpose they insisted that they needed an extra year. On the basis of their remonstrations, Mr. Ruckelshaus, in the best of faith, supported the industry position at congressional hearings, stating:

> "If GM is forced to introduce catalytic converters across the board on '75 models, the prospect of an unreasonable risk of business catastrophe and massive difficulties with these vehicles in the hands of the public must be faced. It is conceivable that complete stoppage of the entire production would occur, with the obvious tremendous loss to the company, shareholders, employees, suppliers, and communities. Short of that ultimate risk is the distinct possibility of varying degrees of interruption with sizable dislocation."

However, within two months of this deferral, GM announced that they had managed to install catalysts around the board for '75 cars, a striking reversal over the course of two months.

Another similar, but even more blatant example of manipulation became evident during the first EPA suspensions hearing in April 1972, when the automobile manufacturers claimed that installation of emission controls in 1975 cars would induce a 5–10% fuel penalty over 1972 cars. However, by April 1973, at the second EPA suspensions decision, the manufacturers admitted that there would be no fuel penalty. By June 1973, GM publicly announced and then informed Congress that there would be a sales-weighted fuel economy of 13% due to converters, another striking reversal.

EPA has testified that, contrary to industry's allegations, technology is available to meet the original 1975 standards. The EPA position has been endorsed by the 1973 NAS-NRC Committee on Motor Vehicle Emission Report, and by small foreign manufacturers who have produced various practical alternatives to the ICE.

Industry in general, with the notable exception of GM, has called for the relaxation of air pollution standards and for discarding antipollution devices to alleviate the "energy crisis." However, it is apparent that more significant major economies can be readily achieved in a variety of other ways, such as reduction of vehicle weight and by elimination of various optional equipment, especially air conditioning. Elimination of air conditioners, rather than emission controls, would produce an economy gain of about 5% by conservative EPA estimates. The automobile and oil industries, however, continue to request that emission controls be abandoned.

Illustrative Examples of Monopolistic Practices

Not only have domestic automobile companies restricted internal R&D into alternatives to the ICE, but they have effectively discouraged consideration of outside technology. Illustratively, after Honda announced that it had converted a Chevrolet Vega to stratified charge which met standards with good mileage performance, GM delayed signing the confidentiality agreement for a further eight months before even examining the Honda technology. Honda has recently demonstrated that stratified charge technology can be equally well applied to large engines, such as the Chevrolet 350. According to EPA test results, the Honda and the Toyo Kogyo (Mazda) easily meet the 1975 standards. Mercedes-Benz has also produced a diesel meeting the 1975 standards.

The public interest movement feels that the automobile industry has to be persuaded or forced to sacrifice short-term marketing interests in favor of long-term societal goals. There are also feelings that the industry must be prevented from making unilateral monopolistic decisions widely affecting the market place. For instance, the GM Opel diesel Cadet, now being sold in Germany, meets 1975 standards for hydrocarbons and carbon monoxide, almost reaches the 1976 NO_x standards, obtains 30 miles/gal and weighs only 3000 lb. GM has, however, decided not to import this small and efficient car to the U.S. because of their unilateral predetermination of what the American con-

sumer wants. Presumably, the needs of GM to protect the ICE are not excluded from such considerations.

The example of the Hinez stratified charge engine, well known to industry in 1958, further supports needs for independent research. In the early '60's, Ford stated that the Hinez model would probably be in production by 1965, which it was not and still is not. In the 1969 conspiracy case, the Justice Department cited three reasons why the automobile industry should have developed the Hinez engine when they were first approached in '58: fuel economy, low cost, and low emissions. The Hinez technology has been recently developed by Honda.

Some Observations on Catalytic Converters

In general, the use of catalytic converter devices is endorsed by public interest groups as a practical method for complying with the immediate requirements of the Clean Air Act. The public interest movement amply recognizes the trade-offs involved between needs to control hydrocarbons, carbon monoxide, and NO_x and the risk of adverse effects of nonregulated emissions from converters: sulfates, platinum and palladium. There are also concerns as to the possibility of a "consumer revolt" if such devices prove ineffective in the hands of the user and also as to the likelihood that ineffective catalysts will result in greater emissions than would have occured from uncontrolled 1969/1970 cars. The critical evaluation of such trade-offs clearly requires free access to the underlying data base. This has proved difficult, if not impossible, as illustrated by the refusal of industry to release certification data. In private, the catalyst manufacturers have stated that they have submitted extensive and all necessary data to top EPA officials. If this is the case, such information does not appear to have yet reached the technological echelons of EPA, let alone the public sector. Perhaps as critical as the access to data is the fact that data on a wide range of problems relating to converter usage—such as sulfate, platinum and palladium emissions, their chronic toxicology, and their atmospheric chemistry—are grossly inadequate or nonexistent. For these reasons, and also in order to avoid creating disincentives to the development of nonpolluting alternate technologies, it is critical to ensure that the industry does not make long term commitments to converters. However, the concerned industries are now talking of commitments as long as seven to ten years.

The economic advantages of the converter to the industry and the need to prevent further erosion of the Clean Air Act are both so compelling that it is now certain that the converter will be marketed for the next few years in spite of a wide range of serious unresolved questions. It thus seems essential to impose strong limitations on the converter market in order to limit the commitment and to ensure further regulatory flexibility.

Some Public Interest Recommendations

Access to Data

The first and most critical need of public interest groups is for free access to data. Public interest groups recognize needs for due safeguards of commercial secrets, provided that the decision as to whether these are true commercial secrets, as defined by the Freedom of Information Act, has been validated by the Office of General Counsel, and provided that such determinations have not been made unilaterally by corporate management.

Top management in EPA should review the whole technical information system and institute necessary corrections and modifications with view to promoting a free and unconstrained flow of information. Illustratively, consideration should be given to placing all concerned public interest groups on relevant mailing lists, such as the APTIC reports which all EPA contractors now receive regularly and gratis.

Public Interest Representation in Decision-Making Processes

It has now become axiomatic that there are major defects in decision-making processes in regulatory practice. It is clear that the system of checks and balances, essential to the democratic process, is largely absent from current regulatory practice. Apart from limited *post hoc* resource, the citizen and consumer, and those who represent his or her interests, scientifically and legally, are virtually excluded from anticipatory involvement in decisions vitally affecting them. The concept of matching benefit against risk has been generally applied to maximize short-term benefits to industry, even though this may entail minimal benefits and maximal risks to the consumer. Such problems are, in large measure, attributable to crippling constraints which still dominate decision-making processes within regulatory agencies. Responsibility for these constraints in regulatory agencies must be shared by the legislature, the scientific and technical community, and consumers and citizens, who have not yet developed adequate mechanisms for protecting their own vital rights and interests.

Public interest groups are deeply concerned by the fact that they are not adequately, if at all, represented at all phases of informal and formal discussions between agencies and industries, besides in all phases of formal decision-making processes. Additionally, all Federal Advisory Committees should have adequate and not nominal representation of qualified scientific and legal representatives of established public interest groups. Exchanges between agency officials and public interest representatives should be encouraged at all possible levels, including by the temporary recruitment of qualified public interest representatives to agency staff positions, under terms of the Interpersonnel Act.

Hidden pressures on agencies, as exerted by powerful concentrated economic lobbies, subvert both development and implementation of standards and of the total regulatory process. This has been well recognized in such statements as:

> "It is the daily machine-gun like impact of both agency and its staff of industry that makes for industry orientation on the part of many honest and capable members, as well as agency staffs." (Report of J. Landis, to President-elect Kennedy, 1960).

Nevertheless, appropriate reforms in agency-industry-societal relationships have yet to be developed. Reforms apart, it is clear that regulatory decisions must be made in the open political arena and on the basis of the evaluation of scientific data that is both expert and unbiased. Industry must be encouraged to avoid preoccupation with short-term economic products and processes which have not been adequately tested by competent and independent investigators. Such approaches will minimize or preclude the possibility of economic dislocation which would otherwise ensue when subsequent challenges necessitate the belated withdrawal of the product or process from commerce and the workplace. Such approaches also reflect recognition of the consonance of long-term industrial interests and broadly-based societal goals and values.

An additional specific concern of public interest groups is the suspicion that industry has unilateral access to proposed rule making at the OMB level prior to announcement in the Federal Register. If these rumors are valid, this offers industry an opportunity to get "objectional requirements" eliminated prior to announcement of proposed rule making in the Federal Register.

Germany now requires that all corporations have a federally appointed public director to represent the public interest. Such a practice should well be extended to U.S. industry, in general, and to the automobile and oil industry, in particular.

Need for Expanded and Independent Research

There are self-evident needs for a massive expansion in research on alternate power

systems—stratified charge, diesel, rotary and Sterling—both by EPA and independent research groups. It seems clear that industry will not voluntarily develop low emission engine technology unless there is a substantial and immediate profit incentive, such as from the use of converters whose cost can be directly passed off to the consumer, in the meanwhile claiming that these emission control devices are federally imposed. Industry would rather follow this self-serving strategy than develop more efficient and less polluting alternatives. There thus seems no option but to develop independent research on such alternatives, which could be funded by emission taxes in recognition of externalized adverse public health effects and material damage resulting from the deferral of 1975 standards, and also by requiring industry to fund EPA-contracted R&D. Authority for the latter requirement is implicit in the Clean Air Act which requires industry to make all good faith efforts. Funding EPA research by industry would clearly represent such a good faith effort.

A May 1972 GAO report, "Cleaner Engines for Cleaner Cars", states categorically that committed EPA resources are not equal to current needs, nor do they adequately reflect the automobile contribution to air pollution. GAO found that EPA's limited efforts often duplicated manufacturers' efforts. Recent cuts by OMB have forced EPA to even further limit research on promising long-term R&D, such as the Advanced Automotive Power Systems Program (AAPSP).

Needs for Increased EPA Appropriations

EPA appropriations and resources are inadequate for the discharge of their mandated responsibilities in air pollution control, besides for control of other environmental pollutants. Total EPA appropriations for air pollution in fiscal year 1974 were approximately $54 million. This is in interesting contrast to the $700 million spent in the same year by industry on emission research, especially as the results of industry research are largely unavailable.

The Federal efforts in air pollution research and abatement are incommensurate with the massive, and hitherto externalized, costs involved. A CEQ-EPA-Commerce document, released in the Spring of 1972, indicated that the cost of air and water pollution abatement from 20 major manufacturing industries, during the period of 1972–1980, was approximately $6 billion annually. However, the same report stated that the annual cost to this country from air pollution alone, in terms of material damage and public health damage approximated $16 billion.